Shamsudin bin Che Mat & Ors v Datuk Bandar Kuala Lumpur

HIGH COURT (KUALA LUMPUR) — ORIGINATING MOTION NO R2–25–27 OF 2000
FAIZA TAMBY CHIK J
22 MAY 2000

Land Law *— Trespass — Squatters — Demolition of squatter huts erected without plans on state land — Summary power to demolish — Notice issued on humanitarian ground — Whether power to demolish was dependant on issue of notice — Whether issue of notice create added obligation under regulation — Whether title or rights of applicants to occupy land is an issue — Assurance made against statute, whether would create equitable estoppel — Whether Essential (Clearance of Squatters) Regulation 1969 is law promulgated under Emergency (Essential Powers) Act 1979 and still in force — Essential (Clearance of Squatters) Regulation 1969 regs 4 & 10*

The respondent, a local authority, had issued notices to the applicants with respect to the demolition of the squatter huts on state land by virtue of their power as provided under reg 4 of the Essential (Clearance of Squatters) Regulation 1969 ('the regulation'). The applicants filed a motion seeking for an order of certiorari to quash the notice issued by the respondent. The applicants raised the following issues: (i) since notices were issued, the exercise of the powers were under reg 10 which applies to private land; (ii) the powers of the respondent under the regulation were defunct; and (ii) claim of equity against the respondent.

Held, dismissing the motion:

(1) It was not disputed that the applicants were occupiers of squatter huts erected on state land. Notices were issued on humanitarian grounds to the applicants as a final reminder to warn the applicant of the consequence of their inaction. Further, it is incorrect to contend that reg 10 is applicable to state land only. Pursuant to the facts of the instant case, the respondent was entitled to exercise its powers under reg 4 without giving any notice to the applicants. Therefore the present exercise to quash the reminder issued by the respondent was an exercise in futility. The statutory powers of the respondent under reg 4 was not dependent on any notice. The powers to demolish could be exercised at anytime without issuing any notice (see p 182D–F).

(2) By clearly leaving the requirement of giving notice in reg 4, it is the intention of the legislature that the local authority is to exercise its summary power to demolish the squatter huts without the necessity of giving notice. However, the respondent by giving a reminder to the applicants of their intended action under the regulation did not create any added obligation under the regulation (see p 183B–C).

(3) The respondent was not the approving authority for alienation of land under the National Land Code 1965. Neither was the issue of the title to land in issue. Under the regulation, as long as the applicants' houses came under the definition of squatter huts, the respondents was empowered to demolish. The powers to demolish squatter huts on state land are provided under reg 4. The whole issue of determining the title or the rights of the applicant to occupy the land was not an issue under the regulation. The regulation is a specific legislature to demolish houses erected without plans (see p 186A–B).

(4) The applicants' submission that the powers of the respondent under the regulation are presently defunct was without any basis. The state of emergency declared in 1964 and 1969 is still existing and laws and regulations enacted under the Emergency (Essential Power) Ordinance 1969 is presently substituted by the Emergency (Essential Powers) Act 1979. The regulation is part of the laws promulgated under the Ordinance which is still in force (see pp 182G–H, 183A).

(5) The act of the applicants were illegal, ie trespassing on state land. The applicants were claiming equity on their illegal act which contravenes s 425 of the National Land Code 1965 and reg 18 and 19 of the regulation. No assurance made against a statute would create equitable estoppel. In the instant case, the purported assurance to allow the applicants to occupy state land was against the Code and the regulation. The purported promissory estoppel claimed by the applicants cannot prevent the respondent from exercising their statutory duties to demolish the squatter huts under the regulation (see pp 183G, 186H, 188B).

[Bahasa Malaysia summary

Responden, sebuah badan berkuasa awam, telah mengeluarkan notis-notis kepada pemohon-pemohon berkenaan dengan perobohan rumah-rumah setinggan di atas tanah kerajaan menurut kuasa yang diperuntukkan di bawah peraturan 4 Peraturan-Peraturan Perlu (Pemugaran Setinggan-Setinggan) 1969 ('peraturan-peraturan tersebut'). Pemohon-pemohon telah memfailkan usul untuk suatu perintah certiorari untuk membatalkan notis yang dikeluarkan oleh responden. Pemohon-pemohon telah membangkitkan isu-isu berikut: (i) sejak notis-notis dikeluarkan, pelaksanaan kuasa adalah di bawah peraturan 10 yang terpakai kepada tanah persendirian; (ii) kuasa-kuasa responden di bawah peraturan tersebut tidak wujud lagi; dan (iii) tuntutan ekuiti terhadap responden.

Diputuskan, menolak usul tersebut:

(1) Tidak dipertikaikan bahawa pemohon-pemohon adalah penghuni-penghuni rumah setinggan di atas tanah negeri. Notis-

notis telah dikeluarkan di atas dasar perikemanusiaan kepada pemohon-pemohon sebagai peringatan untuk memberi amaran kepada pemohon akan akibat ketiadaan tindakan mereka. Selanjutnya, adalah tidak betul untuk menegaskan bahawa peraturan 10 adalah terpakai kepada tanah negeri sahaja. Menurut fakta kes, responden adalah berhak untuk melaksanakan kuasanya di bawah peraturan 4 tanpa memberikan sebarang notis kepada pemohon-pemohon. Oleh itu, permohonan ini untuk membatalkan peringatan yang dikeluarkan oleh responden adalah suatu usaha sia-sia. Kuasa-kuasa statutori responden di bawah peraturan 4 bukanlah bergantung kepada sebarang notis. Kuasa-kuasa untuk merobohkan boleh dilaksanakan pada bila-bila masa tanpa mengeluarkan sebarang notis (lihat ms 182D–F).

(2) Dengan jelas meninggalkan keperluan pemberian notis di dalam peraturan 4, adalah niat perundangan bahawa pihak berkuasa awam akan melaksanakan kuasa terus untuk merobohkan rumah-rumah setinggan tanpa keperluan memberikan notis. Namun, responden dengan memberikan peringatan kepada pemohon-pemohon akan niat tindakan meraka di bawah peraturan tidak mewujudkan sebarang kewajipan tambahan di bawah peraturan-peraturan tersebut (lihat ms 183B–C).

(3) Responden bukanlah pihak berkuasa yang memberi kelulusan pemberimilikan tanah di bawah Kanun Tanah Negara 1965. Begitu juga isu hak milik kepada tanah bukanlah isu. Di bawah peraturan-peraturan tersebut, selagi rumah pemohon-pemohon adalah di bawah definasi rumah setinggan, responden adalah diberi kuasa untuk membuat perobohan. Kuasa-kuasa untuk merobohkan rumah-rumah setinggan di atas tanah negeri adalah diperuntukkan di bawah peraturan 4. Keseluruhan isu penentuan hak milik atau hak-hak memohon untuk menduduki tanah tersebut bukanlah suatu isu di bawah peraturan. Peraturan tersebut adalah perundangan yang spesifik untuk merobohkan rumah-rumah yang didirikan tanpa pelan (lihat ms 186A–B).

(4) Hujahan pemohon-pemohon bahawa kuasa-kuasa responden di bawah peraturan-peraturan tersebut tidak wujud lagi adalah tidak berasas. Keadaan darurat yang diisytiharkan di dalam tahun 1964 dan 1969 masih wujud dan undang-undang dan peraturan-peraturan yang digubal di bawah Ordinan Darurat (Kuasa-kuasa Perlu) 1969 kini digantikan oleh Ordinan Darurat (Kuasa-kuasa Perlu) 1979. Peraturan-peraturan tersebut tersebut adalah sebahagian undang-undang yang diisytiharkan di bawah Ordinan tersebut yang masih berkuatkuasa (lihat ms 182G–H, 183A).

(5) Tindakan pemohon-pemohon adalah menyalahi undang-undang, iaitu menceroboh ke atas tanah negeri. Pemohon-pemohon menuntut ekuiti di atas tindakan kepenyalahan undang-undang mereka yang melanggar s 425 Kanun Tanah Negara 1965 dan

peraturan 18 dan 19 peraturan-peraturan tersebut. Tiada jaminan yang bertentangan dengan statut akan mewujudkan estopel ekuiti. Di dalam kes ini, jaminan yang dikatakan untuk membenarkan pemohon-pemohon untuk menduduki tanah negeri adalah bercanggah dengan Kanun dan peraturan-peraturan tersebut. Andaian estopel promissori yang dituntut oleh pemohon-pemohon tidak boleh menghalang responden daripada melaksanakan tugas statutori mereka untuk merobohkan rumah-rumah setinggan di bawah peraturan-peraturan tersebut (lihat ms 183G, 186H, 188B).]

A B C

Notes

For a case on squatter generally, see 8 *Mallal's Digest* (4th Ed, 1999 Reissue) para 3450.

Cases referred to

D

Bohari bin Taib & Ors v Pengarah Tanah Galian Selangor [1991] 1 MLJ 343 (refd)
Cheng Hang Guan & Ors v Perumahan Farlim (Penang) Sdn Bhd & Ors [1988] 3 MLJ 90 (refd)
Chong Wooi Leong & Ors v Lebbey Sdn Bhd [1998] 2 MLJ 644 (refd)
Devi v Francis [1969] 2 MLJ 169 (refd)
Government of the State of Negeri Sembilan & Anor v Yap Chong Lan & Ors; Lesco Development Corp Sdn Bhd v Yap Chong Lan & Ors [1984] 2 MLJ 123
Howell v Falmouth Boat Construction Ltd [1951] 2 All ER 278 (refd)
Lebbey Sdn Bhd v Chong Wooi Leong & Anor [1998] 5 MLJ 368 (refd)
Lee Suat Hong v Teo Lye [1988] 2 MLJ 537 (refd)
Mok Deng Chee v Yap See Hoi & Ors [1981] 2 MLJ 321 (refd)
M/s Motilal Padampat Sumar Mills Co (P) Ltd v State of Uttar Pradesh & Ors [1978] 2 SCR 641 (refd)
Salim bin Ismail dan lain-lain v Lebbey Sdn Bhd (No 2) [1997] 2 MLJ 4 (refd)
Sentul Murni Sdn Bhd v Ahmad Amiruddin bin Kamaruddin & Ors Guaman Sivil No S2–22–157–96 (refd)
Shaheen bte Abu Bakar v Perbadanan Kemajuan Negeri Selangor [1998] 4 MLJ 233 (refd)
Siew Soon Wah & Ors v Yong Tong Hong [1973] 1 MLJ 133
Union of India and Others v Godfrey Philips India Ltd [1985] 4 SCC 369 (refd)

E F G H

Legislation referred to

Emergency (Essential Power) Act 1979
Emergency (Essential Power) Ordinance 1969
Essential (Clearance of Squatters) Regulations 1969 s 4 regs 3, 4, 10, 14, 18, 19, 20, 23, Pts II, III

I

Federal Capital Act 1960 s 4(1)
Federal Territory (Modification of National Land Code) Order 1974 s 2(2)
National Land Code 1965 ss 48, 221(3), 425
Street, Drainage and Building Act 1974 ss 3, 70(1)

R Sivarasa (*Kamarul Hisham* with him) (*Daim & Gamany*) for the applicant.

B Thangaraj (*Thangaraj & Associates*) for the respondent.

Faiza Tamby Chik J: The instant proceeding is confined strictly to the statutory duties of the respondent under the Essential (Clearance of Squatters) Regulations 1969 ('the regulations'). Let me at the outset express my view that the respondent as a local authority is empowered to demolish any house or structures erected without any plans. The issue of title or interest of the occupants of the squatter huts is not an issue for consideration under the regulations. The applicants raised the following issues:

No notice required under reg 4 of the regulations

It must be observed that the statutory duties and powers under the regulations are meant for the clearance of squatters. Squatters huts' are defined in reg 3 as any house or structure erected without a plan approved by a local authority.

Regulation 3 reads:

> 'Squatter hut' means any house, hut, shed, stall, lean-to, shelter, roofed enclosure or any extention or structure attached to any building or other erection, of whatever materials made and whether used for the purpose of a human habitation or otherwise which has been erected or is in the course of erection otherwise than in accordance with a plan approved by a local authority or in respect of which a licence issued by a local authority has been cancelled, withdrawn or has expired and is situated on any land;

Regulations 4 reads:

> Local authority may demolish squatter huts on State land, reserved land, mining land and forest land.
>
> A local authority or its agents or servants may in respect of State land, reserved land, mining land and forest land —
>
> (a) enter by day or by night any such land for the purpose of summarily demolishing any squatter hut; and
>
> (b) remove any person and movable property in any squatter hut; and
>
> (c) summarily demolish any squatter but on the land.

Regulation 14 reads:

> Nothing to prevent demolition of squatter huts
>
> Nothing in the law relating to rent control, nor any lease or agreement shall be deemed to prevent the demolition of any squatter hut under these regulations.

Regulation 20 reads:

> Effects of these Regulations
>
> The provision of these regulations shall have effect notwithstanding anything inconsistent therewith contained in any written law.

Regulation 23 reads:

> Suspension of other written law
>
> For so long as the Emergency is in force, the provisions of any written law other than the Code relating to clearance of land and the demolition of unauthorized buildings shall be suspended.

Part II of the regulation is the powers of the local authority to demolish squatter huts erected on state land. Part III of the regulation is the power of local authority to demolish squatter huts on private land. The difference between the powers of Part II and Part III is that the powers of the local authority under Part II of the regulations is to be exercised at the absolute discretion of the local authority at anytime without the requirement of giving any notice. I am of the view that there are no merits whatsoever in the submission of the applicants' solicitors that since notices were issued, therefore the exercise of the powers are under reg 10. The reasons are as follows: It is not disputed that the applicants are occupiers of squatter huts erected on state land. Notices were issued on humanitarian grounds to the applicants as a final reminder to warn the applicants of the consequence of their inaction. Regulation 10 is under Part II of the regulation, which applies to private land. Regulation 10 specifically refers to 'enter by day or by night any private land for the purpose of summarily demolishing any squatter huts'. With such specific provision, it is incorrect to contend that reg 10 is applicable to State land only. Pursuant to the facts of the instant case, the respondent is entitled to exercise its powers under reg 4 without giving any notice to the applicants. Therefore, the present exercise to quash the reminder issued by the respondent is, I conclude, an exercise in futility. The statutory powers of the respondent under reg 4 is not dependant on any notice. The powers to demolish could be exercised at anytime without issuing any notice.

Whether the powers under the regulations are presently defunct?

I am of the opinion that the applicant's solicitors submission that the powers of the respondent under the regulation are presently defunct is without any basis. The state of emergency declared in 1964 and 1969 is still existing and laws and regulations enacted under the Emergency (Essential Power) Ordinance 1969 is presently substituted by the Emergency (Essential Power) Act 1979. The preamble of Emergency (Essential Powers) Act 1979 provides:

> An Act under cl (5) of art 150 of the Federal Constitution to enact as an Act of Parliament the Emergency (Essential Powers) Ordinance 1969, and to provide for the validation of all subsidiary legislation made or purporting to have been made under the said Ordinance on or after the 20th February 1971, and for the validation of all acts and things done under the said Ordinance or

A any subsidiary legislation made or purporting to have been made thereunder, and to provide for matters connected therewith.

The regulation is part of the laws promulgated under the Ordinance which is still in force.

B *Definition of 'summarily'*

A plain reading ought to be given to reg 4. No provision for the requirement of notice is stated in reg 4. The word 'summarily' is also used in reg 8 and reg 20 but however the power to summarily demolish can only be exercised after giving seven days notice. By clearly leaving the requirement of giving C notice in reg 4, I am of the view that it is the intention of the legislature that the local authority is to exercise its summary power to demolish the squatter huts without the necessity of giving notice. However, the respondent by giving a reminder to the applicants of their intended action under the regulation does not create any added obligation under the regulations.

D *Can there be equity in the face of specific legislation regulating rights over land*

The applicants with reference to 'can there be equity in the face of specific legislation regulating rights over land' had referred to the following cases of *Devi v Francis* [1969] 2 MLJ 169, *Mok Deng Chee v Yap See Hoi & Ors* [1981] 2 MLJ 321, *Lee Suat Hong v Teo Lye* [1988] 2 MLJ 537, *Siew Soon* E *Wah & Ors v Yong Tong Hong* [1973] 1 MLJ 133 and *Cheng Hang Guan & Ors v Perumahan Farlim (Penang) Sdn Bhd & Ors* [1988] 3 MLJ 90.

Let me again at the outset say that the aforesaid cases are quite irrelevant as they refer to tenancy matters and rights under equity created under private law. In none of those cases are there any issues on the F following matter which are pertinent to the instant case. In relation to those cases they are not cases where equity raised is in conflict with the provisions of the National Land Code 1965 ('the Code'). In the case of *Siew Soon Wah*, the Privy Council had held that the words 'the tenancy shall be permanent' has to be read with the provisions of the Code and shall not exceed thirty years as provided under s 221(3) of the Code. The instant case G deals with the powers of the respondent as a local authority to carry out its statutory duties under the regulations to demolish squatter huts. It must be noted that the act of the applicants are illegal, ie trespassing on state land. The applicants are claiming equity on their illegal act which contravenes s 425 of the Code and reg 18 and 19 of the regulations.

H *Cases under O 89 of the Rules of High Court 1980*

It is noted that in the applicants' written submission, the appellant's had again relied on the cases under O 89 to substantiate their case. The cases of *Shaheen bte Abu Bakar v Perbadanan Kemajuan Negeri Selangor* [1998] 4 MLJ 233, *Salim bin Ismail dan lain-lain v Lebbey Sdn Bhd (No 2)* [1997] I 2 MLJ 4 and *Bohari bin Taib & Ors v Pengarah Tanah Galian Selangor* [1991] 1 MLJ 343 had been referred. I am of the view that the aforesaid cases could be distinguished on the following grounds:

(a) Those cases are cases under O 89 where the court has to decide upon the application of the land owner whether the occupants are squatter simpliciter.

(b) In the instant case, the respondent is not the land owner but a local authority.

(c) The instant case is to be decided on the statutory duties of the respondent as a local authority to demolish squatter huts. It is not disputed that the houses erected by the applicants are without any approved plans and are squatter huts as defined by the regulations.

(d) The respondent is merely carrying out its statutory powers as provided by legislature.

The case of Sentul Murni Sdn Bhd v Ahmad Amiruddin bin Kamaruddin & Ors (Guaman Sivil No S2–22–157–96)

The case of *Sentul Murni* is again a case of a private developer filing a suit for vacant possession. It is not a case under the regulations. It is not a case of a local authority exercising their statutory duties to demolish squatter huts. In respect of s 48 of the Code, Kamalanathan Ratnam J in *Sentul Murni*'s case said:

> On the facts so far established I find that there is certainly licence and consent from the State authority that the defendants can occupy or continue to occupy the land. There is also no evidence that the Land Executive Committee of Wilayah Persekutuan has changed or revoked its policy in relation to the occupation of the Malay residents in Kampung Chubadak at any time. Whilst s 48 of the NLC expressly prohibits any adverse possession against the State, the said land in question had passed from the State to STLR Sdn Bhd and then to the present plaintiff. There is no question of any adverse possession against the State coming into question. The defendants herein are seeking to enforce their equity against the plaintiff who took over ownership of the land with full notice of the existence of the defendants' equity. Whilst I have found that the defendants have an equity to be reckoned with, such equity must be subject to the plaintiff's over-riding right to legal ownership of the land pursuant to the NLC for which said purchase the plaintiff had given valid consideration.

Whereas in the instant case, the applicant's are occupying State land.

Whether there is any claim of equity against the State or the respondent?

It has been stated in Malaysia that the concept of equitable estoppel is quite inappropriate in the field of public law. Promissory estoppel or equitable estoppel cannot be used against the State or a local authority in carrying out its statutory duties. In the case of *Government of the State of Negeri Sembilan & Anor v Yap Chong Lan & Ors; Lesco Development Corporation Sdn Bhd v Yap Chong Lan & Ors* [1984] 2 MLJ 123 the Federal Court had held at pp 128–129:

> On the matter of the concept of equitable estoppel in public law, we would refer to the decision of the House of Lords in *Newbury District Council v*

Secretary of State for the Environment in which Lord Fraser of Tullybelton deprecated (at p 606) the introduction of 'an estoppel or bar, personal to the particular party, which is quite inappropriate in this field of law, which is concerned with rights that run with land' and he went on to add that 'to do so would lead to uncertainty and confusion'. Lord Scarman in the course of his speech said (at p 616): 'In the field of property law, equity is a potent protection of private rights, operating upon the conscience of those who have notice of their existence. But this is no reason for extending it into the public law of planning control, which binds everyone', and he continued (at p 617): 'My Lords, I agree with the view so consistently expressed by Lord Parker CJ, that is wrong to introduce into public administrative law concepts such as equitable estoppel which are essentially aids to the doing of justice in private law'. This case was followed and applied by the English Court of Appeal in *Pioneer Aggregates (UK) Ltd v Secretary of State for the Environment & Ors*.

In *Cudgen Rutile (No 2) Pty Ltd v Chalk* the Judicial Committee of the Privy Council held that if certain authorities to prospect issued under the Mining Acts of Queensland contained an agreement by the Minister to grant mineral leases, that agreement was not authorized by the statutes which required a series of steps to be taken, decisions to be made and discretion to be exercised, before the Minister was empowered to grant a lease. Fundamental to the decision was the proposition that the Crown cannot contract for the disposal of Crown lands without statutory authority and that the agreement in question was not authorized because it was an anticipatory fetter on the exercise of a discretion which, according to the statute, had to be exercised in the public interest at the end of the prescribed procedure. To the same effect was *Watson's Bay and South Shore Ferry Co Ltd v Whitfeld* which was referred to with approval and applied in *Cudgen Rutile*. We would refer again in this context to *Sidek bin Haji Muhamad*, at p 314).

In *Western Fish Products Ltd v Penwith District Council & Anor* a firm purchased a disused factory for the purpose of manufacturing fish products and incurred expenditure after being told orally on behalf of the local authority's chief planning officer that application for an 'established use' certificate would be 'purely a formality'. The local authority eventually refused the certificate and refused planning permission. The English Court of Appeal held that in any event an estoppel could not be raised to prevent a statutory body exercising its statutory discretion or performing its statutory duty, and therefore, even if the council's officers while acting in the apparent scope of their authority had purported to determine the plaintiffs' planning application in advance, that was not binding on the council because it alone had power under the Town and Country Planning Act 1971 to determine the applications. Dismissing the firm's claim, the court held that there were only two kinds of exception to the principle that a public authority could not be estopped from exercising its duties and powers. One exception was where it had statutory power to delegate functions to its officers and there were special circumstances to justify the applicant in thinking that the officer thus had power to bind the authority by an irrevocable decision, and the other exception is where the authority waives a procedural requirement relating to some application made to it, whereupon it may be estopped from relying on the lack of formality. Neither of these exceptions apply to the proceedings before us, and in the light of the statutory provisions before us, and in the light of the statutory provisions we have referred to and the authorities we have discussed it would appear that the equity sought to be raised by the

> respondents would establish against the State Authority rights in respect of State land which it is prevented by statute from creating other than in the prescribed manner.

In the instant case, the respondent is not the approving authority for alienation of land under the Code. Neither is the title to land in issue. Under the regulation, as long as the applicants houses comes under the definition of squatter huts, the respondent is empowered to demolish. The powers to demolish squatter huts on State land are provided under reg 4. The whole issue of determining the title or the rights of the applicant to occupy the land is not an issue under the regulation. The regulation is a specific legislature to demolish houses erected without plans. The next paramount issue is whether the applicants can prevent the respondent from exercising their rights under the regulations on the grounds of equitable estoppel, ie on a purported promise which would defeat the laws of the country and in this case s 425 of the Code and regs 18 and 19 of the regulations? The respondent cannot be restrained to act against the applicants who had clearly violated the law.

In *Howell v Falmouth Boat Construction Ltd* [1951] 2 All ER 278, Lord Normand (read by Lord Simonds) stated at pp 284–285:

> It is not for the court to presume the existence of orders which are neither pleaded or proved. The other ground on which the learned Lord Justice proceeded is that:
>
> > 'Whenever government officers, in their dealings with a subject, take on themselves to assume authority in a matter with which the subject is concerned, he is entitled to reply on their having the authority which they assume. He does not know, and cannot be expected to know, the limits of their authority, and he ought not to suffer if they exceed it.
> >
> > As I understand this statement, the respondents were, in the opinion of the learned lord justice, entitled to say that the Crown was barred by representations made by Mr Thompson and acted on by them from alleging against them a breach of the statutory order, and, further, that the respondents were equally entitled to say in a question with the appellant that there had been no breach. But it is certain that neither a minister nor any subordinate officer of the Crown can by any conduct or representation bar the Crown from enforcing a statutory prohibition or from prosecuting for its breach. It is, therefore, with regret that I feel unable to accept a short way to a decision which avoids the necessity of construing the order of 1940 and of arriving at the meaning of the word "licence". Nevertheless, for the reasons I have given, I would dismiss the appeal.'

No assurance made against a statute would create equitable estoppel. In the instant case, the purported assurance to allow the applicants to occupy state land is against the Code and the regulations. In the textbook, *Administrative Law of Malaysia and Singapore* (3rd Ed), the author at p 538 states:

> An element common to both, s 115 and the equitable estoppel, however, is that none operates against a statute; the authority making the representation will not be forced to infringe a statute. Similarly, the doctrine of substantive

A legitimate expectation, as discussed above, has yet to find a foothold in Malaysia or Singapore.

Indian cases on applicability of equity against the State

There are conflicting decision by the Indian Supreme Court on the B applicability of promissory estoppel against the state. However, the Malaysian case laws are settled on this issue as propounded by the case of *Government of the State of Negeri Sembilan v Yap Chong Lan & Ors*. This case was cited with approval by the High Court and the Court of Appeal in the recent case of *Lebbey Sdn Bhd v Chong Wooi Leong & Anor* [1998] 5 MLJ 368 and *Chong Wooi Leong & Ors v Lebbey Sdn Bhd* [1998] 2 MLJ 644. C However, it is settled both in Malaysia, India and England that promissory estoppel cannot be invoked against the state to carry out a representation or promise which is contrary to law. In the case of *M/s Motilal Padampat Sumar Mills Co (P) Ltd v State of Uttar Pradesh & Ors* [1978] 2 SCR 641 Bhagawati J had said at p 688:

D

> The House of Lords did not in *Howell*'s case negative the applicability of the doctrine of promissory estoppel against the Government. What it laid down was merely this, namely, that no representation or promise made by an officer can preclude the Government from enforcing a statutory prohibition. The doctrine of promissory estoppel cannot be availed to permit or condone a breach of the law. The ratio of the decision was succinctly put by Lord E Normand when he said '... neither a minister nor any subordinate officer of the Crown can by any conduct or representation bar the Crown from enforcing a statutory prohibition or entitle the subject to maintain that there has been no breach of it'. It may also be noted that promissory estoppel cannot be invoked to compel the Government or even a private party to do an act prohibited by law. There can also be no promissory estoppel against the F exercise of legislative power. The legislature can never be precluded from exercising its legislative function by resort to the doctrine of promissory estoppel. Vide *State of Kerala v Gwalior Rayon Silk Manufacturing Co Ltd.*

Likewise in the case of *Union of India and Others v Godfrey Philips India Ltd* [1985] 4 SCC 369, Bhagwati CJ again at p 387 stated:

G

> 13 Of course we must make it clear, and that is also laid down in *Motilal Sugar Mills* case, that there can be no promissory estoppel against the legislature in the exercise of its legislative functions nor can the Government or public authority be debarred by promissory estoppel from enforcing a statutory prohibition. It is equally true that promissory estoppel cannot be used to compel the Government or a public authority H to carry out a representation or promise which is contrary to law or which was outside the authority or power of the officer of the Government or of the public authority to make. We may also point out that the doctrine of promissory estoppel being an equitable doctrine, it must yield when the equity so requires; if it can be shown by the Government or public authority that having regard to the facts as they have transpired, it would be, inequitable to hold the Government or public authority to the I promise or representation made by it, the court would not raise an equity in favour of the person to whom the promise or representation is made and enforce the promise or representation against the Government or

> public authority. The doctrine of promissory estoppel would be displaced in such a case, because on the facts, equity would not require that the Government or public authority should be held bound by the promise or representation made by it. This aspect has been dealt with fully in *Motilal Sugar Mills* case and we find ourselves wholly in agreement with what has been said in that decision on this point.

I am of the opinion that the purported promissory estoppel claimed by the applicants cannot prevent the respondent from exercising their statutory duties to demolish the squatter huts under the regulation. The applicants are clearly in breach of s 425 of the Code, regs 18 and 19 of the regulation and the laws relating to planning. Section 70(1) of the Street, Drainage and Building Act 1974 stipulates:

> No person shall erect any building without the prior written permission of the local authority.

The definition of building under s 3 of the Street, Drainage and Building Act 1974 is:

> 'building' includes any house, hut, shed or roofed enclosure, whether used for the purpose of a human habitation or otherwise, and also any wall, fence, platform, staging, gate, post, pillar, paling, frame, hoarding, slip, dock, wharf, pier, jetty, landing-stage or bridge, or any structure support or foundation connected to the foregoing.

Is the respondent the Federal Government?

The submission by the applicant's counsel that the respondent is the Federal Government is totally misconceived. For all purposes and intent, the respondent is a local authority governing the city of Kuala Lumpur. The duties and powers of the respondents are created by statute and the preamble to the Federal Capital Act 1960 clearly stipulates that it is 'An Act to provide for the local government of the city of Kuala Lumpur and for matters incidental thereto'. The duties of the respondent as stated in s 4(1) of the Federal Capital Act 1960, as:

> The municipal affairs of the City of Kuala Lumpur shall be administered by the Commissioner of the City of Kuala Lumpur.

It is evident from s 4 of the Code and s 2(2) of the Federal Territory (Modification of National Land Code) Order 1974 that the definition of 'State Authority' in the Federal Territory refers to the Government of the Federation.

Case of Chong Wooi Leong & Ors v Lebbey Sdn Bhd [1998] 2 MLJ 644

Similar issues were raised, ie consent and acquiescence from the Selangor State Government and the appellants in that case had expended thousands of ringgit to develop their respective lots. In the High Court, Abdul Wahab Patail J in *Lebbey Sdn Bhd v Chong Wooi Leong & Anor and other applications* [1998] 5 MLJ 368; [1998] 1 AMR 497 decided in favour of the land owners on the following grounds:

A Issues:

(1) Whether the defendants had acquired an equitable right by acquiescence from the State Authority, to occupy the land.

(2) Whether the defendants can rely on promissory estoppel.

Held:

B 1 (a) 'State authority' under the National Code (the Code) is defined, for the purposes of the state of Selangor, as the Ruler. For practical purposes, this means the Ruler acting upon the recommendation of the Exco of the State.

(b) The District Officer is a personality who is not recognized by the Code. He therefore has no authority to bind the State Authority. The C relevant authority is at all times the State Authority, and not even the act of the Collector, let alone a District Officer, can bind the State Authority.

(c) Therefore, the defendants have not only come onto the land without consent, but have also remained thereon without the consent of the State Authority. The knowledge or acquiescence of other state D authorities or personalities is wholly irrelevant to the Code.

(d) The fact that the State Authority has not taken action against the defendants does not mean that the State Authority has consented to the occupation of the land.

(e) The defendants have breached the Code as they have been in unlawful occupation of State land, which is punishable under s 425 E of the Code. Therefore, the defendants cannot avail themselves of equitable remedies, as they have not come to equity with clean hands.

(f) Although the defendants have alleged applying for a temporary occupation licence, no evidence was advanced to this effect at the trial. In any case, even if there was an application made for a F temporary occupation licence, the mere submission of an application can never amount to consent of such occupation by the State Authority until the licence is actually issued. This is because the Code makes no provision for any provisional occupation until approval or licence is issued.

2 There is no evidence of any promise made by the State Authority or G plaintiff to the defendants that the latter could have acted upon. The State Authority's failure to prosecute the defendants for unlawful occupation of State land under s 425 of the Code, being non-action, is not by itself a promise.

Plaintiff's application allowed.

H In the Court of Appeal, the High Court judgment was affirmed. The Court of Appeal had also reaffirmed the decision of the *Government of the State of Negeri Sembilan & Anor v Yap Chong Lan & Ors* on the grounds that the doctrine of equitable estoppel cannot be established against the State authority. In respect of the cases of *Devi v Francis*, *Mok Deng Chee v Yap See Hoi & Ors*, *Siew Soon Wah & Ors v Yong Tong Hong*, the Court of Appeal I was of the view that the aforesaid cases are of no relevance as they deal with landlord and tenant relationship as regards buildings on land subject to monthly tenancy. At pp 657–659 of *Chong Wooi Leong*'s case the Court of Appeal further held:

In his judgment, the learned trial judge in the present appeal said: A

> 'There is also another reason. A person seeking remedy in equity must come with clean hands. It is clear the defendants have been in breach of the Code punishable under s 425 thereof. The defendants cannot be said to have come with clean hands. That the State Authority had not acted against the defendants cannot mean the State Authority has given consent. Such argument cannot stand in the face of the clear provision B that no title to State land shall be acquired by possession, unlawful occupation or occupation under any licence for any period whatsoever: s 48. Adverse possession cannot become a bar to the recovery of possession by the proprietor or any person having an interest therein: s 341.
>
> The Code specified the procedure to obtain title or temporary C occupation licence, and no evidence has been advanced that any of the defendants in this case had made either application. Mention is made by a witness that an application for a temporary occupation licence was made by a committee in 1991, but no evidence of the application, and in respect of whom, has been advanced.
>
> Even if there is an application and that application was made on D behalf of each and every one of the defendants in this case, the mere submission of an application can never amount to consent by the State Authority to occupation until the approval and licence is issued since the Code makes no provision for any provisional occupation until approval or licence is issued. In this regard, s 73(3) [s 78(3)] gave the true principle under the Code: alienation takes effect only upon registration E notwithstanding earlier approval. That the registration means everything in the Torrens system has been emphasized by the Federal Court in *Bee v Maruthamuthu* [1977] 2 MLJ 7. Mere approval itself is therefore insufficient. By the same token in the case of temporary occupation licenses, the right to occupy arises only when the licence is issued.'

Section 13 of the Code provides that the State authority may by notification F in the Gazette delegate to the State Director, or to the Registrar, or to any Land Administrator or other officer appointed under sub-s (1) of s 12, the exercise or performance, subject to such conditions and restrictions as may be prescribed in the notification, of any powers or duties conferred or imposed on the State Authority by or under the Code. There is no evidence, however, of any such delegation in this instance. G

It is also relevant to refer to s 40 of the Code which vests solely in the State Authority the entire property in all State land within the territories of the State and all minerals and rock material within or upon any land in the state the rights to which have not been specifically disposed of by the State Authority.

Order 89 r 1 of the Rules categorically states that where a person claims H possession of land which he alleges is occupied solely by a person or persons, not being a tenant or tenants holding over after the termination of the tenancy, who entered into or remained in occupation without his licence or consent or that of any predecessor in title of his, the proceedings may be brought by originating summons in accordance with the provisions of that order.

It is clear that by taking all these actions, the respondent is against anyone I claiming possession of the land occupied without their licence or consent. As for the predecessor in title which is the State Authority, the definition at s 5 of the Code denotes that the consent or licence can only come from the Ruler or

Governor, as the case may be, and as the land here is situated in the State of Selangor, it must mean the Ruler.

And the Ruler, by virtue of cl 55 of the Selangor State Constitution, must act on the advice of the State Executive Council except for certain functions which he may act in his discretion. By cl 50 of that State Constitution, the executive authority of the State shall be vested in the Ruler but executive functions may by law be conferred on other persons or authorities. A licence or consent from any other person, therefore, as in this case, be it the local government official, land administrator, district officer, minister, member of parliament, state assemblyman or anyone else in a position of authority certainly would not suffice.

In conclusion at pp 659–660, the Court of Appeal adopted the views of the judgment of the High Court:

The learned trial judge concluded:

'Cases of this nature always carry a heavy emotional burden. It is not unnatural to develop an emotional attachment to an abode, no matter how humble, that one has lived in for some time. Secondly, the persons usually involved to be evicted are more often than not from the lower economic scale who had moved in onto State land without licence or title. The court is not unknowing of these socio-economic issues. But the issues themselves do not create legal or equitable rights. No one can fail to appreciate that one cannot obtain or acquire rights merely by moving in. It would encourage and reward the brazen to move in on every piece of empty State land, while those who follow the provisions of the Code will be disadvantaged. Such a position is wholly indefensible. The greater good of the society is better served by an orderly adherence to the provisions of the law, in this case, under the National Land Code. The plaintiffs having duly obtained clear registered title to the said land, it would also be unjust for the court to be generous to the defendants with the rights of the plaintiff. To do so would be lending the assistance of the court to those who by unlawful occupation of the land hold to ransom registered owners unless they are paid off.'

As we were of the same view as the learned trial judge in the instant appeal as well as the trial judge who heard the application for the injunction and the trial judge who heard the O 14 application, despite the valiant attempts by learned counsel for the appellants to impress us with his research on this point, we did not even call learned counsel for the respondent to reply.

Likewise in the instant case there is no evidence at all that any attempts were made by the applicants to apply for the alienation of land and neither was there any representation made by the federal government. In any event as adverted earlier, no representation, encouragement or consent by any party to an illegal act would create equitable estoppel against the authorities.

Conclusion

I conclude that the present proceedings is to be confined strictly to the statutory duties of the respondent under the regulations. It is an indisputable fact that the applicant's abode are squatter huts as defined under the regulations. The structures were built without any approved plans and the respondent is entitled to demolish the squatter huts under

reg 4 without any prior notice. Certiorari is an equitable remedy. I must make a note here to consider the noble act by the government, who had award a contract on prime land to build low costs houses for the sole purpose of relocating squatters. The applicants conduct had severely delayed the project to build 948 low cost houses. The applicants are also not left in a lurch. Proper housing arrangement had been made to relocate them. For these reasons the motion by the applicants is hereby dismissed with costs.

Motion dismissed.

Reported by Jafisah Jaafar